IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5058 OF 2006

Vishwas Shankarrao Bankar .. Petitioner.
Versus
Subhadrabai Namdeo Dhawan .. Respondent.

Mr.S.S.Kulkarni for petitioner.

CORAM : R.M. SAVANT, J.
DATE : 11th June, 2007.

P.C.

1. This petition impugns the order dated 23rd February, 2006 passed by the Joint Civil Judge, Junior Division, Baramati on an application filed by the petitioner, who is the defendant in Regular Civil Suit No.137 of 2003.

2. The said suit has been filed by the respondent herein claiming alleged title and possession over the disputed portion in Survey No.190. The petitioner is the defendant who is the owner of Survey No.190 while plaintiff is claiming such disputed portion as of Survey No.190 as belonging to Survey No.193. It is the case of the petitioner herein that disputed portion is the part and parcel of Survey No.190

and Baramati Medad road is exclusively passing through Survey No.190 and, therefore, it is the contention of the petitioner that the boundary of Survey No.193 is upto the Baramati Medad road is false. Both the parties have produced maps issued by T.I.L.R. The map issued to the original plaintiff i.e. respondent herein is dated 22/07/2003 and the map produced by the defendant-petitioner herein is dated 30/06/2003. On account of variance between the two maps, the defendant-petitioner had sought the appointment of the Court Commissioner.

3. The said application came to be rejected on the ground that the matter has been kept for final arguments and that the parties have to prove their case by strict and cogent evidence.

4. The learned counsel for the petitioner states that in view of the variance in the two maps produced by both the parties, the

defendant-petitioner should be given liberty to agitate the issue regarding the appointment of the Court Commissioner if the occasion so arises at the stage of the hearing of the arguments and that the petitioner should not be concluded on account of the impugned order dated 23rd February, 2006. In my view, in the teeth of the aforesaid facts, request made by the petitioner is reasonable. The petitioner, therefore, would be at liberty to agitate the issue that Court Commissioner is required to be appointed at the stage of hearing of the said suit if the occasion so arises.

5. In view of the above, the petitioner seeks liberty to withdraw the above petition. Petition is dismissed as withdrawn.

6. All contentions on merits of both the parties are expressly kept open.

(R.M. SAVANT, J.)